

**DOCKET  
OF A MEETING OF  
THE LAKEWOOD CITY COUNCIL  
TO BE HELD IN THE COUNCIL CHAMBERS  
LAKEWOOD CITY HALL - 12650 DETROIT AVENUE  
JULY 6, 2015  
7:30 P.M.**

The Regular Meetings of Lakewood City Council shall be held on the first and third Mondays of each month at 7:30 P.M., except that when such meeting date falls on a holiday such meeting shall instead be held on the following day. A Docket and Agenda of the business proposed to be transacted by Council will be available in the Clerk's Office and on the City's website [www.onelakewood.com](http://www.onelakewood.com) as soon after 4 PM on the Friday before a Council meeting as possible.

Section 121.08 of the Codified Ordinances of the City of Lakewood establishes rules for the public to follow when speaking before Council:

**ADDRESSING COUNCIL** – The President may recognize any non-member for addressing Council on any question then pending. In such cases, the person recognized shall address the chair, state his or her name and address and the subject matter he or she desires to discuss. Speakers must be courteous in their language and avoid personalities. When addressed by the Chair, the speaker must yield the floor and comply with all rulings of the chair, said rulings not being open to debate. Except with permission of Council specifically given, speakers shall be limited to five minutes. No person who has had the floor shall again be recognized until all others desiring an opportunity to speak have been given an opportunity to do so.

**AGENDA ITEMS PROTOCOL:**

The Clerk at the beginning of the meeting will present the AGENDA ITEMS sign-in sheet to the President of Council. Speakers will be called to address Council by the Chair. A citizen must first write his or her name, address and agenda item number on the designated sign-in sheet in order to be recognized.

**PUBLIC COMMENT PROTOCOL:**

The clerk at the end of the meeting will present the PUBLIC COMMENT sign-in sheet to the President of Council. Public Comment will be welcomed at the end of a Council Meeting on miscellaneous issues or issues other than agenda items. A citizen must first write his or her name, address and topic on the designated sign-in sheet in order to be recognized. The forum is not designed to be a question and answer session.

- I. Pledge of Allegiance
  - II. Moment of Silence
  - III. Roll Call
- Reading & disposal of the minutes of the Regular Meeting of Council held June 15, 2015.  
Reports, legislation and communications from Members of Council, the Mayor and other City Officials.

\*\*\*\*OLD BUSINESS\*\*\*\*

1. Committee of the Whole Report of 7/6/15 meeting. Ms. Madigan; Chair (To Be Provided)
2. **RESOLUTION NO. 8805-15** – A RESOLUTION to take effect immediately provided it receives the affirmative vote of at least five members of Council, or otherwise to take effect and be in force after the earliest period allowed by law, authorizing the Mayor to enter into an agreement with Everstream, Inc., an Ohio corporation, or OneCommunity, an Ohio non-profit corporation, for the installation, operation and maintenance of a fiber optic communications system within the city of Lakewood without the necessity of bidding in accordance with Lakewood Codified Ordinance §111.04(a)(10) in an amount not to exceed \$900,000. (REFERRED TO THE COMMITTEE OF THE WHOLE 5/18/15, DEFERRED 6/1/15 & 6/15/15) (Pg. 4)
3. **RESOLUTION NO. 8809-15** – A RESOLUTION to take effect immediately provided it receives the affirmative vote of at least five members of Council, or otherwise to take effect and be in force after the earliest period allowed by law, authorizing the Mayor to enter into an amended agreement with Rockport Square, LLC, or its assignee, affiliate or designee, for the development of the remaining phases of the Rockport Square development project. (REFERRED TO THE COMMITTEE OF THE WHOLE 6/1/15, DEFERRED 6/15/15) (Pg. 7)
4. Public Works Committee Report regarding Resolution No. 8806-15, 8813-15 & 8814-15. (To Be Provided). Mr. Juris; Chair.
5. **RESOLUTION NO. 8806-15** – A RESOLUTION approving the use of submerged lands for property located at and abutting 12550 Lake Avenue, Lakewood, Ohio (a legal description of which is attached hereto as “Exhibit A”), in order to permit the owners the opportunity to undertake lakeshore protection measures. (DEFERRED 6/15/15) (Pg. 10)
6. **RESOLUTION NO. 8813-15** – A RESOLUTION to take effect immediately provided it receives the vote of at least five members of Council, or otherwise to take effect at the earliest period allowed by law, authorizing the Director of Public Works to enter into a design-build form of agreement for the design and construction of corrections to the sewer system under the western Lakewood clean water pilot project with Underground Connections, Inc. in an amount not to exceed \$800,000. (REFERRED TO THE PUBLIC WORKS COMMITTEE 6/15/15. (Pg. 13)
7. **RESOLUTION NO. 8814-15** – A RESOLUTION to take effect immediately provided it received the affirmative vote of at least five members of Council, or otherwise to take effect and be in force after the earliest period allowed by law, authorizing the Director of Public Works to enter into an agreement to accept a grant from the Ohio EPA clean water fund grant for the Lakewood Stream Bank Restoration and Fish Shelf project in the amount of \$122,842 and requiring a match by the City of Lakewood in the amount of \$81,894. (REFERRED TO THE PUBLIC WORKS COMMITTEE 6/15/15) (Pg. 29)
8. Rules & Ordinances Committee Report regarding Committee Meeting Held June 22, 2015. (Pg. 31) Mr. O’Leary; Chair.

9. **ORDINANCE NO. 25-15** – AN ORDINANCE to take effect immediately provided it receives the affirmative vote of at least five members of Council, or otherwise to take effect at the earliest period allowed by law, to approve the editing and inclusion of certain ordinances and resolutions as part of the various component codes of the Codified Ordinances and to provide for the publication of such new matters. (PLACED ON 1<sup>ST</sup> READING & REFERRED TO THE RULES & ORDINANCES COMMITTEE 6/15/15)(Pg. 35)

**\*\*\*\*NEW BUSINESS\*\*\*\***

10. City Council Appointments to the Clean Water Integrated Planning Task Force. (To Be Provided)
11. Communication from Planning & Development Director Siley regarding Modification to the Rockport Square Planned Development (PD). (Pg.37)
12. Liquor Permit Application for C1 & C2 transfers to Kerolos LLC; 17796 Detroit Road, from Webb Food Mart; same address. (Pg. 42)

READ 5/18/15 & REFERRED TO THE  
COMMITTEE OF THE WHOLE.  
READ & DEFERRED 6/17/15.  
Deferred 8/15/15.

RESOLUTION NO. 8805-15

BY:

A RESOLUTION to take effect immediately provided it receives the affirmative vote of at least five members of Council, or otherwise to take effect and be in force after the earliest period allowed by law, authorizing the Mayor to enter into an agreement with Everstream, Inc., an Ohio corporation, or OneCommunity, an Ohio non-profit corporation, for the installation, operation and maintenance of a fiber optic communications system within the city of Lakewood without the necessity of bidding in accordance with Lakewood Codified Ordinance §111.04(a)(10) in an amount not to exceed \$900,000.

WHEREAS, the City of Lakewood has obtained two quotes for the construction of a fiber optic communications system that will be available for use by the city, the city's public partners including the private and public schools and Lakewood Public Library as well as private businesses within the community; and

WHEREAS, this fiber optic communications system will make faster internet speeds available to the city, partners and potential business considering relocating to Lakewood; and

WHEREAS, it is in the best interest of the City to award this agreement without competitive bidding; and

WHEREAS, this Council by a vote of at least five of its members determines that this resolution is an emergency measure, and that this resolution shall take effect at the earliest date possible as set forth in Article III, Sections 10 and 13 of the Second Amended Charter of the City of Lakewood, and that it is necessary for the immediate preservation of the public property, health and safety, and to provide for the usual daily operation of municipal departments in order to have this communications network installed prior to the end of the year; now, therefore

BE IT RESOLVED BY THE CITY OF LAKEWOOD, OHIO:

Section 1. Council hereby determines that it is impractical to award the purchase of electronic health monitoring devices under competitive bidding procedures, and that it is more cost-effective and in the best interests of the City to award the contract without competitive bidding, and thus authorizes the Mayor to enter into an agreement with Everstream, Inc., an Ohio corporation, or OneCommunity, an Ohio non-profit corporation, for the installation, maintenance and operation of a fiber optic communications system in an amount not to exceed \$900,000.

Section 2. Council specifically approves the agreement in substantially the same form as that attached as Exhibit A.

Section 3. It is found and determined that all formal actions of this Council concerning and relating to the passage of this resolution were adopted in an open meeting of this Council,

and that all such deliberation of the Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

Section 4. This resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare in the City and for the usual daily operation of the City for the reasons set forth and defined in the preamble to this resolution, and provided it receives the affirmative vote of at least five members of Council, this resolution shall take effect and be in force immediately upon its adoption by the Council and approval by the Mayor, or otherwise it shall take effect and be in force after the earliest period allowed by law.

Adopted: \_\_\_\_\_

\_\_\_\_\_  
President of Council

\_\_\_\_\_  
Clerk of Council

Approved: \_\_\_\_\_

\_\_\_\_\_  
Mayor

**Exhibit A**

To be provided

RESOLUTION NO. 8809-15

BY:

A RESOLUTION to take effect immediately provided it receives the affirmative vote of at least five members of Council, or otherwise to take effect and be in force after the earliest period allowed by law, authorizing the Mayor to enter into an amended agreement with Rockport Square, LLC, or its assignee, affiliate or designee, for the development of the remaining phases of the Rockport Square development project.

WHEREAS, more than a decade ago the city of Lakewood entered into an agreement with Rockport Square, LLC, for the development of property known as the Rockport Square development project; and

WHEREAS, Rockport Square, LLC, has been unable to meet its obligations under the agreement regarding the final two phases of the project; and

WHEREAS, it is in the best interest of the City to further negotiate and amend this agreement so that the property is put to an eventual tax generating use rather than remain vacant land abutting Detroit Avenue; and

WHEREAS, this Council by a vote of at least five of its members determines that this resolution is an emergency measure, and that this resolution shall take effect at the earliest date possible as set forth in Article III, Sections 10 and 13 of the Second Amended Charter of the City of Lakewood, and that it is necessary for the immediate preservation of the public property, health and safety, and to provide for the usual daily operation of municipal departments in order to encourage the development of this land; now, therefore,

BE IT RESOLVED BY THE CITY OF LAKEWOOD, OHIO:

Section 1. The Mayor or his designee is hereby authorized to enter into an amended agreement with Rockport Square, LLC or its assignee, affiliate or designee, for the development of the remaining two phases of the Rockport Square development project, and any related agreements or instruments to carry out the terms of the amended agreement.

Section 2. Council specifically approves the agreement attached as Exhibit A.

Section 3. It is found and determined that all formal actions of this Council concerning and relating to the passage of this resolution were adopted in an open meeting of this Council, and that all such deliberation of the Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

Section 4. This resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare in the City and for the usual daily operation of the City for the reasons set forth and defined in the preamble

to this resolution, and provided it receives the affirmative vote of at least five members of Council, this resolution shall take effect and be in force immediately upon its adoption by the Council and approval by the Mayor, or otherwise it shall take effect and be in force after the earliest period allowed by law.

Adopted: \_\_\_\_\_

\_\_\_\_\_  
President of Council

\_\_\_\_\_  
Clerk of Council

Approved: \_\_\_\_\_

\_\_\_\_\_  
Mayor

## **Exhibit A**

Amended Tax Increment Financing and Development Agreement

(To be provided)

REFERRED TO THE PUBLIC WORKS COMMITTEE  
5/18/15.

DEFERRED 6/15/15.

BY:

RESOLUTION NO. 8806-15

A RESOLUTION approving the use of submerged lands for property located at and abutting 12550 Lake Avenue, Lakewood, Ohio (a legal description of which is attached hereto as "Exhibit A"), in order to permit the owners the opportunity to undertake lakeshore protection measures.

WHEREAS, property owner, Meridian Condominiums Inc., 12550 Lake Avenue, Lakewood, Ohio, have proposed to construct shore protection in Lake Erie at Lakewood, Cuyahoga County, Ohio; and

WHEREAS, as part of the application to lease submerged lands, the parties involved must submit to the Ohio Department of Natural Resources a resolution from Lakewood City Council approving the proposed use of the submerged land; now, therefore

BE IT RESOLVED BY THE CITY OF LAKEWOOD, OHIO:

Section 1. The City of Lakewood finds and determines that territory being proposed for construction of shore protection, which territory is further described in the application for a submerged lands lease, is not necessary or required for the construction, maintenance or operation by the municipal corporation of breakwaters, piers, docks, wharves, bulkheads, connecting waterways, water terminals, facilities and improvements, and marginal highways in the aid of navigation and water commerce, and the land uses specified in the application comply with regulation of permissible land use as determined by the city.

Section 2. The Clerk of Council is hereby authorized and directed to certify a copy of this resolution to the Ohio Department of Natural Resources, Office of Real Estate and Land Management.

Section 3. It is found and determined that all formal actions of this Council concerning and relating to the adoption of this resolution were adopted in an open meeting of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

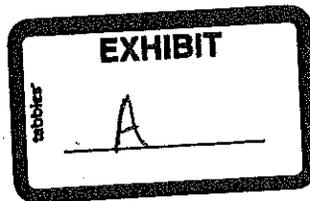
Adopted: \_\_\_\_\_

\_\_\_\_\_  
PRESIDENT

\_\_\_\_\_  
CLERK

Approved: \_\_\_\_\_

\_\_\_\_\_  
MAYOR



**The Meridian Condominium Inc.  
Submerged Land Lease Parcel  
12,204 Square Feet (0.2802 Acre)  
Page 1 of 2**

**Situated** in the City of Lakewood, County of Cuyahoga and State of Ohio and known as being submerged land within Lake Erie adjacent to Original Rockport Section No. 21 (Fractional Township 7-N, Range 14-W Connecticut Western Reserve). Also being adjacent to the land conveyed to The Meridian Condominium, Inc. as recorded in Volume 13629, Page 305 of the Cuyahoga County Records, being more definitely described as follows:

**Commencing** at a 5/8" iron pin in a monument box found at the intersection of the centerline of Lake Avenue (100 feet wide) and the centerline of Cove Avenue;

Thence, along the centerline of Lake Avenue, North 73° 01' 35" West, 473.92 feet to the southerly extension of the easterly line of said land conveyed to The Meridian Condominium, Inc., said point being referenced by a 5/8" iron pin in a monument box found 0.12 feet South;

Thence, leaving the centerline of Lake Avenue, along the southerly extension of the easterly line of said land conveyed to The Meridian Condominium, Inc., North 00° 58' 51" West, 52.56 feet to the southeasterly corner of said land conveyed to The Meridian Condominium, Inc.;

Thence, along The Meridian Condominium, Inc.'s easterly line, North 00° 58' 51" West, 863.34 feet to the shoreline of Lake Erie as observed on August 19, 2014 and the **True Point of Beginning** for the parcel herein described;

Thence, along said shoreline of Lake Erie the following thirteen courses;

South 67° 55' 04" West, 10.19 feet;

Thence South 88° 54' 11" West, 45.07 feet;

Thence North 51° 17' 07" West, 35.30 feet;

Thence South 64° 42' 36" West, 14.31 feet;

Thence North 50° 10' 51" West, 26.31 feet;

Thence North 45° 38' 43" West, 43.66 feet;

Thence North 58° 03' 57" West, 6.71 feet;

Thence North 83° 49' 57" West, 8.67 feet;

Thence North 42° 34' 02" West, 14.54 feet;

Thence South 78° 33' 38" East, 5.41 feet;

Thence North 07° 47' 20" East, 11.38 feet;

Thence North 37° 36' 55" West, 17.15 feet;

Thence North 69° 41' 55" West, 29.72 feet to the historic 1956 delineation line of Lake Erie;

**The Meridian Condominium Inc.  
Submerged Land Lease Parcel  
12,204 Square Feet (0.2802 Acre)  
Page 2 of 2**

Thence, leaving said shoreline of Lake Erie, along the historic 1956 delineation line of Lake Erie, South 50° 55' 24" East, 22.70 feet to the littoral rights partition line between said land conveyed to The Meridian Condominium, Inc. and land conveyed to Winton Properties, Inc. as recorded in Volume 14817, Page 857 of the Cuyahoga County Records;

Thence, along said littoral rights partition line, North 18° 15' 48" East, 55.25 feet;

Thence, leaving said littoral rights partition line, South 87° 21' 53" East, 38.29 feet;

Thence South 67° 32' 09" East, 28.73 feet;

Thence South 36° 09' 00" East, 55.85 feet;

Thence South 49° 16' 18" East, 34.61 feet;

Thence South 73° 16' 02" East, 51.40 feet;

Thence South 35° 14' 11" East, 54.78 feet to the littoral rights partition line between said land conveyed to The Meridian Condominium, Inc. and land conveyed to Marine Towers, LLC as recorded in Volume 94-08430, Page 7 of the Cuyahoga County Records;

Thence, along said littoral rights partition line, South 21° 43' 01" West, 6.59 feet to the point of beginning.

Containing within said bounds 12,204 square feet (0.2802 acre) of land as surveyed by KS Associates, Inc. under the supervision of Trevor A. Bixler, Professional Surveyor No. 7730 in August, 2014 and March, 2015.

The basis of bearings for this survey is Ohio State Plane, North Zone NAD83(2011) Grid North.

T. A. Bixler 3-25-15

Trevor A. Bixler, P.S.  
Professional Surveyor, Ohio No. 7730

**KS ASSOCIATES**  
Civil Engineers + Surveyors  
260 Burns Road, Suite 100  
Elyria, OH 44035  
440 365 4730



RESOLUTION NO. 8813-15

BY:

A RESOLUTION to take effect immediately provided it receives the vote of at least five members of Council, or otherwise to take effect at the earliest period allowed by law, authorizing the Director of Public Works to enter into a design-build form of agreement for the design and construction of corrections to the sewer system under the western Lakewood clean water pilot project with Underground Connections, Inc. in an amount not to exceed \$800,000.

WHEREAS, Lakewood identified Underground Connections, Inc. through a request for qualification process as the most qualified of the two qualifications received; and

WHEREAS, this Council by a vote of at least five of its members determines that this resolution is an emergency measure and that it shall take effect at the earliest date possible as set forth in Article III, Sections 10 and 13 of the Second Amended Charter of the City of Lakewood and that it is necessary for the immediate preservation of the public property, health, and safety and to provide for the usual daily operation of municipal departments in that the City wishes to create the design-build delivery model for this project so it may occur in 2015; now, therefore,

BE IT RESOLVED BY THE CITY OF LAKEWOOD, OHIO:

Section 1. The Director of Public Works to enter into a design-build form of agreement for the design and construction of corrections to the sewer system under the western Lakewood clean water pilot project with Underground Connections, Inc. in an amount not to exceed \$800,000.

Section 2. Council hereby specifically approves the contract between the city of Lakewood and Underground Connections, Inc. in substantial form as is attached as Exhibit A.

Section 3. It is found and determined that all formal actions of this Council concerning and relating to the passage of this resolution were adopted in an open meeting of this council, and that all such deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with all legal requirements.

Section 4. This resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare in the City and for the usual daily operation of the City for the reasons set forth and defined in the preamble to this resolution, and provided it receives the affirmative vote of at least five members of Council this resolution shall take effect and be in force immediately upon its adoption by the Council and approval by the Mayor, or otherwise it shall take effect and be in force after the earliest period allowed by law.

Adopted: \_\_\_\_\_

\_\_\_\_\_  
President

\_\_\_\_\_  
Clerk

Approved: \_\_\_\_\_

\_\_\_\_\_  
Mayor

Exhibit A

## DESIGN/BUILD AGREEMENT

Effective Date of Agreement: \_\_\_\_\_, 2015

THIS AGREEMENT ("Agreement") is made and entered into on the dates so noted below with the Effective Date above note, by and between:

\_\_\_\_\_ (the "DB"), and

The City of Lakewood (the "City").

Owner Name:	City of Lakewood, Ohio
City address for notices is:	Division of Engineering and Construction 12650 Detroit Avenue Lakewood, OH 44107 Attn: Mark K. Papke
The Design-Builder:	_____
Design-Builder address for notices is:	_____ _____, Ohio _____
For the Project:	Pilot Project for the elimination of water intrusion into City sanitary storm sewer system.
City's Responsible Administrator:	Mark K. Papke City Engineer
City's Authorized Representative is:	Mark K. Papke, City Engineer (or others designated by him)
City Representative address for notices is:	Division of Engineering and Construction 12650 Detroit Avenue Lakewood, Ohio 44107
Consulting Engineer	CT Consultants Attn: Richard Iafelice Vice-President

Consulting Engineer address for notices is:	8150 Sterling Court Mentor, Ohio 44060
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NOW, THEREFORE, in consideration of the mutual promises herein contained, the DB and the City hereby agree as follows:

**ARTICLE 1. THE WORK.**

The Design Builder (“DB”) shall provide all work required by the Contract Documents (the “Work.”)The Project is a pilot project with the objective to eliminate the sources of clean water on private property from entering the City’s sanitary sewer system. The purpose of the Project is to initially evaluate the costs and benefits of such a program and the potential conducting of similar projects citywide. Preliminary to the undertaking of the work of the DB, the City has conducted and shall continue to conduct physical inspections of approximately 102 privately-owned parcels (“Individual Parcels”) located on Eldred Avenue, Delaware Avenue and Atkins Avenue in order to assess the ability to reduce infiltration and inflow within the existing sanitary sewer system. The Work of the DB shall include (but shall not be limited to) the assessment of the City’s individual inspection reports as to each Individual Parcel including review of pre-construction videotapes and other data and information compiled by the City; design and development of individual plans of repair and corrective action in order to address the remediation of conditions and rehabilitation of each Individual Parcel. Thereafter , the DB shall proceed to perform the Work in accordance with the plans and specifications generated by the DB and pre-approved by the City related to each Individual Parcel.

This Davis Bacon Project will utilize the Design-Build (“Design-Build”) project delivery method.

**ARTICLE II. SCOPE OF SERVICES; PRESENTMENT OF PLANS AND SPECIFICATIONS AND FIRM PRICE**

The selected Design-Builder, as a portion of its required Scope of Services and its Work, will discuss and clarify with the City the breakdown of the Project’s detailed cost components; address the City’s Project requirements; and develop and ultimately refine the Project schedules associated with the performance of the Work related to each Individual Parcel and the Project overall. Project schedules shall be required to be revised, from time to time, and tendered to the City for its review and approval on a periodic basis and in any event no less often than at each bi-weekly job meeting undertaken or as otherwise directed and requested by the City.

When authorized to proceed in writing by the City with respect to the Work as to one or more Individual Parcels, the DB shall proceed on a phased basis.

1. Initially, the DB shall proceed with a constructability review of the Individual Parcels and shall provide comments and suggestions as to the City-provided inspection reports, CCTV videos and logs and other documents produced by the City and/or the

Consulting Engineer associated with the City's initial physical inspection reports relative to the Individual Parcels. While the information provided by the City is believed to be accurate, the DB shall not be entitled to rely on the accuracy of such information and shall, rather, come to its own conclusions relative to the extent and nature of the Work to be performed as to each Individual Parcel.

2. The DB shall further supplement its knowledge and information associated with each Individual Parcel and shall thereafter design the remediation and rehabilitation plan as to each Individual Parcel, providing further a schedule for the completion of the Work associated with each Individual Parcel and such other information as directed by the City and/or the Consulting Engineer.
3. The DB-generated plans and specifications associated with the performance of the Work for each Individual Parcel shall be tendered to the City Engineer for review whereafter, upon approval of the City Engineer, the DB shall proceed to obtain a building permit and other required individual permits from the Building Department in accordance with the then-applicable ordinances, standards and requirements of the City Building Department. Such building permits shall be issued by the City on a no-charge basis to the DB.
4. In the event the plans and specifications tendered for review by the City Engineer are unacceptable and/or require revisions on the part of the DB, the DB shall undertake such revisions and modifications as required on a timely basis and in accordance with the directives and/or instructions and/or suggestions of the City Engineer. Provided, however, no such directives, instructions or suggestions of the City Engineer shall constitute assumption of nor relieve the DB from any of the express duties and responsibilities of the DB to solely perform the necessary design work relative to remedial actions.
5. In the event the plans and specifications tendered for review by the City Engineer are acceptable, the DB shall undertake the performance of the Work per Individual Parcel upon issuance of an Authorization to Proceed by the City as below noted.
6. Simultaneously with the submission of the aforementioned plans and specifications, the DB shall tender its firm price for performance of the Work per Individual Parcel, the date DB shall complete the proposed Work and such other pertinent information as the City requires. Same shall be submitted in written form, utilizing such forms for submission of the DB's firm price, guaranteed date of completion and other information as the City Engineer prescribes. The City Engineer may also require the presentment of other forms and reporting documents generated by the City, Consulting Engineer or by the DB and those forms shall be utilized uniformly during the course of performance of the Project and submitted in accordance with such directions and on a timely basis as the City directs.

7. The approval of the plans and specifications generated by the DB together with its firm price submission shall become effective only upon the issuance by the City of and Authorization to Proceed associated with the respective Individual Parcel.

The firm price presented by the DB may be subject to modification solely in accordance with the provisions as to changes ordered and/or approved by the City pursuant to Article 6 of the General Conditions.

In the performance of the Work for each Individual Parcel, the DB, to the satisfaction of the City and as additionally set forth in the General Conditions and all other Contract Documents, shall provide all necessary materials, tools and equipment, and all utility and transportation services, and perform all labor, coordination and supervision necessary to complete in a satisfactory manner all the Work associated with each Individual Parcel and in all respects in strict accordance with the Contract Documents on file at the office of the City Engineer and any other offices of the City. The DB shall also perform the Work in accordance with the the City building code and other governmental ordinances and/ or regulations governing the performance of the Work.

A significant component and covenant of the Design Builder shall be the obligation to communicate directly with owners and occupants of the Individual Parcels in order to, among other things, schedule the undertaking of Work including entry into the residences and other structures located on the Individual Parcels. Such obligation of the Builder shall further include assurances that the highest level of safety and security of the occupants and owners is maintained throughout the course of the Project and as may be further subject to the reasonable directions and conditions as may or shall be imposed by the City.

### **ARTICLE III: CITY OPTIONS**

The City reserves the right to accept or reject the firm price offering of the DB and to, in its discretion, allow for the bidding and/or performance of the Work by others associated with one or more of the Individual Parcels in its sole and exclusive discretion. In such event, the DB shall not be compensated for its generation of plans and specifications and/or other activities undertaken by the DB associated with the activities required of the DB prior to receipt of an Authorization to Proceed with performance of the Work as to the applicable Individual Parcel. In such instance the City shall be granted, without further action, an irrevocable and permanent license to utilize the plans and specifications and other work product of the DB for any purpose the City deems appropriate and/or necessary so long as the City tenders its acknowledgment that it accepts and shall use such DB's plans and specifications and other work product without warranty or guaranty whatsoever being extended by the DB as to the accuracy and/or applicability of such plans and specifications generated by the DB.

The City's option rights under this Article III are independent of the "Termination for Convenience" rights as set forth in Article 9 of the General Conditions. The City retains the right

to terminate this Contract for convenience at any time in accordance with Article 9 of the General Conditions.

#### **ARTICLE IV. CONTRACT DOCUMENTS**

The Contract Documents consist of this Agreement and those documents more fully set forth in the definition of Contract Documents appearing in the General Conditions. The Contract Documents are incorporated by reference into this Agreement to be as fully a part of this Contract as if attached hereto or fully rewritten herein, and shall remain in effect during the term of this Contract. This Contract constitutes the complete agreement between the City and the DB and supersedes any previous agreements or understandings.

#### **ARTICLE V. SUPPLEMENTATION OF CITY DIRECTIONS AND PROCEDURES**

The City reserves the right to furnish the DB with such further drawings, directions, documents, illustrations, procedure modifications and/or explanations ("Further Directions") as may be necessary in the discretion of the City to accomplish the Work to be done. The DB shall comply with any Further Directions issued to the DB to the extent that the scope of work of DB does not materially change. The DB shall conform to any Further Directions by the City as a part of this Agreement.

#### **ARTICLE VI. CONTRACT SUM**

The total Contract Sum associated with the entirety of the Work shall not exceed the amount of \$800,000.00. The Contract Sum represents the total amount allocated by the City toward completion of the Project associated with the performance of the entirety of the Work relating to the 102 Individual Parcels referenced herein.

Upon acceptance of a firm price tendered by the DB in respect to each Individual Parcel, the balance of the Contract Sum shall be reduced by the amount of the firm price allocable to each respective Individual Parcel. In the event that the total amount of firm price offers tendered by DB do not exceed the Contract, the City shall be entitled to retain the balance of the Contract Sum.

As a fully addressed in the General Conditions, no claims for extras, additions or alterations shall be made by DB as to any firm price offer tendered to the City except in the instance of an approved Change Order. No modification, amendment or alteration shall be made in or to the Contract Documents, except by Change Order in accordance with the Contract Documents. When a Change Order is executed, the firm price for the Work as to the applicable Individual Parcel shall be modified and the Contract Sum accordingly adjusted.

**ARTICLE VII. RETAINAGE.** The City shall withhold payment of 10% of the entire approved periodic billings associated with each payment application tendered by the DB until such time as Four Hundred Thousand Dollars (\$400,000.00) (i.e. Fifty percent (50%) of the Contract Sum)

has been invoiced by DB. Thereafter, in respect to all remaining payment applications approved by the City, no further retaining shall be withheld. When there exists no other reason to withhold retainage and Contractor receives a certificate of Final Completion as to the overall Project and such other documents as required by the City in accordance with the Contract Documents, the retainage held will be paid to the DB in accordance with the provisions of the General Conditions.

#### **ARTICLE VIII. PAYMENT OF SUBCONTRACTORS AND MATERIAL SUPPLIERS.**

The DB shall promptly make payment to all subcontractors and material suppliers. The DB further agrees not to withhold a larger percentage of any subcontractor's and material supplier's payments, than the percentage of the DB's payments retained by the City. The City retains the right to require of the DB evidence of payment to subcontractors and material suppliers, inclusive of but not limited to the issuance of executed partial lien and claim waivers and, ultimately, final lien and claim waivers prior to issuance of final payment and release of the retainage.

If at any time there should be evidence of any lien or claim asserted associated with any of the Work of DB, the City or the Authorized Representative shall cause to be retained an amount equal to 150% of the lien or claim, which amount shall be deducted from subsequent payments due the DB for the purpose of securing such lien or claim. Should the City make payments on behalf of the DB to suppliers and/or subcontractors or others associated with the Project as to whom the DB and/or its subcontractors or suppliers are obligated, directly or indirectly, then the DB shall pay to the City a sum of money equal to the sum of all monies that the City may be compelled and/or has elected to pay, other than from funds retained from the DB, in discharging any lien or claim. Such reimbursement obligation on the part of DB shall further include the obligation on the part of DB to reimburse the City for its reasonable attorneys fees and costs incurred as well as allocable related costs and the administrative fees and personnel costs of City representatives and/or agents, including the fees and costs of the City's Consulting Engineer.

#### **ARTICLE IX. PROJECT COMPLETION**

The DB shall commence the Work as to each City-identified Individual Parcel on such date specified in the Authorization to Proceed and shall fully complete the Work within those number of days identified and proposed by DB and approved by the City. The DB recognizes that the City cannot and does not commit to any specific date or dates when the City shall have tendered to the DB all of the City's inspection reports and other related documents and things permitting the DB to generate its plans and specifications and submit its firm price offer per Individual Parcel. The DB recognizes that, given the fact that its Work shall be performed on the Individual Parcels owned and and/or occupied by residential occupants, there may be instances when there may be delays affecting the performance of the DB's Work. The DB hereby expressly waives any claim for compensation associated with delays in the performance of its Work, whether or not within or outside the control of the City. Such limitation shall include but shall not be limited to delays associated with lack of access to an Individual Parcel related to failure and/or inability

on the part of the owner(s) and/or occupant(s) of such Individual Parcels to grant or permit the Work to proceed. The DB recognizes the assumption of the risk that such delays shall or may occur during the course of the performance of its Work.

**ARTICLE X. LIQUIDATED DAMAGES**

City and the DB agree that if the Work is not completed in accordance with the guaranteed completion date referenced in the City's Authorization to Proceed as to an Individual Parcel, the City's damages would be extremely difficult or impracticable to determine. Accordingly, the parties agree that the amounts indicated below are reasonable estimates of and reasonable sums for damages. The City may deduct any liquidated damages due from the DB from any amounts otherwise due to the DB under the Contract Documents. This provision shall not limit any right or remedy of City in the event of any other default of the DB other than failing to complete the Work within the Contract Time.

As applicable to each Individual Parcel with reference to the Date of Completion identified on each Notice to Proceed:

Liquidated damages shall apply as to the final completion dates for each Individual Parcel and on a daily rate basis as follows:

1. 30 days after stated final completion date: \$25.00 for each day;
2. Commencing 60 days after the stated final completion date: \$50.00 for each day;
3. Commencing 90 days after the stated final completion date: \$75.00 for each day.

**ARTICLE XI. CONSEQUENTIAL/INCIDENTAL DAMAGES.**

The DB shall be held liable for any consequential and/or incidental damages suffered by the City and each owner and/or occupant of an Individual Parcel as a result of DB's breach of the provisions of the Contract Documents, including (but not limited to) expenses reasonably incurred in the inspection, receipt, transportation, and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses, or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach. Such obligation on the part of the DB shall be supplemental to the provision of insurance coverage required and as set forth in the attached General Conditions, the Insurance Requirements and applicable Contract Documents.

**ARTICLE XII. WAIVER OF RIGHT TO FILE MECHANIC'S LIENS OR OTHERWISE PURSUE CLAIMS AS TO INDIVIDUAL PARCELS AND OWNERS.**

The DB expressly waives any right to file any mechanics liens and/or claims in respect to any work associated with any Individual Parcel and hereby further covenants that it shall cause each of its subcontractors and/or suppliers to waive any right to file mechanic's liens and claims affecting any Individual Parcel. The DB recognizes and acknowledges that its only right or

remedy relative to any claims it may assert as to Work performed as to the Project or any Individual Parcel is to pursue its monetary claims directly against the City and in accordance with the Contract Documents. In the event of the filing of a mechanic's lien or claim by the DB, any subcontractor, supplier or other party or entity providing services and/or materials arising from the actions and/or omissions of the DB, the DB shall indemnify and hold harmless the City, the Consulting Engineer, each Individual Parcel Owner and each Individual Parcel occupant, their respective agents, representatives and employees (collectively, the "Indemnitees") from all liens, claims, losses, demands, causes of action or suits of whatever nature arising out of any claims or liens asserted. Such indemnification shall extend to any and all damages, losses and expenses, including but not limited to attorney fees, arising out of or resulting from the assertion of any liens and/or claims by any third parties. Such obligation herein set forth shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist or as was or is imposed upon the DB in accordance with the Contract Documents.

In the event of the institution of any litigation or arbitration proceedings as to which claims may be or are asserted against any of the Indemnitees, the DB agrees to further reimburse each Indemnitee for all of and Indemnitee's its attorney fees, administrative time and consequential damages and expenses incurred by the City in defense of and/or associated with resolving such claims or liens. The City and each Indemnitee shall be entitled to elect to engage legal counsel of its choice.

#### **ARTICLE XIII. PREVAILING WAGES.**

The DB shall provide that eight (8) hours shall constitute a day's work and that the prevailing wage rate of the locality as determined by the Department of Industrial Relations of the State of Ohio shall control the contract wages as stipulated in Chapter 4115, Ohio Revised Code. Provided, however, the prevailing wage rates shall not apply associated with the services strictly related to design work undertaken by the DB.

#### **ARTICLE XIII. PAYMENT NOT DEEMED PROJECT ACCEPTANCE.**

No certificate of payment, no provision in the Contract Documents, and no partial or entire use of the Work performed by the DB shall constitute an acceptance of Work not done in accordance with the Contract Documents or shall relieve the DB of liability in respect to any express or implied warranties or responsibility for faulty materials or workmanship. The DB shall remedy any defects in the Work and pay for any damage resulting therefrom, which shall appear within a period of two (2) years from the date of final acceptance of the Work, acceptance of the Work as to each Individual Parcel to be issued by way of individual Certificate of Final Completion.

#### **ARTICLE XIV. ASSIGNMENT OF ANTI-TRUST RIGHTS.**

Note: Each party to this transaction recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser of goods and services; in this instance the ultimate purchaser is the City. Therefore, the following assignment is made:

For good cause and as consideration for executing the contract and intending to be legally bound, the DB, acting herein by and through the person signing this contract on behalf of the DB as a duly authorized agent, hereby assigns, sells, conveys and transfers to the City any and all right, title and interest in and to any and all claims and causes of action the DB may have or hereafter acquire under the antitrust laws of the United States of America or the State of Ohio, PROVIDED that the claims or causes of action relate to the particular goods, products, commodities, intangibles, or services purchased, procured, or acquired by or rendered to , the City pursuant to the contract, and EXCEPT as to any claims or causes of action which result from antitrust violations commencing after the price is established under the contract and which are not passed on to the City under an escalation clause, Change Order, or through some other means. In addition, the DB warrants and represents that the DB will require any and all of the DB's subcontractors and first-tier suppliers to assign any and all federal and state antitrust claims and causes of action to the City, subject to the provision and exception stated above. The provisions of this article shall become effective at the time the City awards or accepts the contract, without further acknowledgment by any of the parties.

#### **ARTICLE XV - DB'S COVENANTS AND REPRESENTATIONS**

Without superseding, limiting, or restricting any other representation or warranty set forth elsewhere in the Contract Documents, or implied by operation of law, the the DB makes the following covenants and representations to City:

- A. The DB and all of its design professionals and subcontractors are properly certificated, licensed and qualified to perform the Work required by the Contract Documents.
- B. The DB accepts the relationship of trust and confidence with the City established by the Contract Documents and shall fully cooperate with City and comply with all Further Instructions.
- C. The DB and its design professionals have carefully examined the overall site of the Project, adjacent areas and those Individual Parcels subject to the performance of work by the DB; have suitably investigated the nature and location of the Work relative to each Individual Parcel and have satisfied themselves as to the general and local conditions which will be applicable, including but not limited to: (1) conditions related to site access and to the transportation, disposal, handling and storage of materials; (2) the availability of labor, water, power and roads; (3) normal weather conditions; (4) observable physical conditions of each Individual Parcel and existing site conditions including: size, utility capacities and connection options of external utilities; (5) the surface conditions of the ground and (6) the character and

availability of the equipment and facilities which will be needed prior to and during the performance of Work.

D. The DB and its design professionals have suitably reviewed and/or shall, as provided, suitably review all those inspection reports and other data provided by the City and shall proceed in accordance with the Contract Documents and those Further Directions issued by the City.

E. The DB and its design professionals have carefully reviewed the City documents tendered to it together with all Contract Documents. The DB acknowledges that such documents provide, inter alia, a suitable understanding on the part of the DB of the scope, level of quality, design intent and the procedures for the development of the design to a state of 100% completion.

F. The DB agrees that, in respect to each Individual Parcel, (1) it will manage, coordinate and fully complete the design and all necessary and appropriate pre-construction activities; (2) The DB will cause its design professionals and others providing design and/or Project -related services to describe and depict the final design associated with each Individual Parcels subject to approval by the City, which construction documents, plans and specifications will include all information required by the DB and/or its subcontractors and suppliers to complete the construction and (3) it will manage and timely construct the Work as to each Individual Parcel in consideration for the City's payment of the firm price proposed by the DB and approved by the City.

G. The DB and its design professionals have reviewed the preliminary schedule agreed to between the DB and the City and agree that the design and construction tasks and milestones are reasonable and feasible.

H. The DB also agrees that time is of the essence for the performance of the Work.

I. The DB agrees that all Construction Documents will be complete, coordinated, and accurate.

J. The DB agrees that all materials, equipment and furnishings incorporated into or used in the Work will be of good quality, new (unless otherwise required or permitted by the Contract Documents) and free of liens, claims and security interests of third parties. As required by the City, the DB will furnish satisfactory evidence as to the kind and quality of the materials, equipment and furnishings, including those City Specifications referenced in the General Conditions.

K. The DB agrees that the Work will be of good quality, free of defects and will conform with the requirements of the Contract Documents. Work not conforming to the requirements of the Contract Documents, including substitutions in design or construction not specifically approved or authorized by the City in advance, may be considered defective.

L. The DB agrees to correct and otherwise address any error(s), omission(s), or deficiencies in the Contract Documents at no additional cost to City. Provided, however, this provision in no way limits the liability of the DB.

M. The DB hereby agrees to take direction from representatives, employees and/or agents of the City and shall cooperate with the Consulting Engineer, the Authorized Representative and all other persons involved in the Project.

N. The DB and its subcontractors shall only engage employees hired by it and subcontractors qualify under the background check qualifications and conditions provision of the General Conditions.

O. The DB shall only execute subcontracts in the form approved by the City, a copy of which is attached hereto as Attachment A. The DB acknowledges and understands that such subcontracts with its subcontractors and suppliers shall irrevocably contain the provision providing for the right of assignment to the City in the event of default by the DB and that, in the event of default on the part of the DB, the DB shall take any and all steps and measures to assure full and unencumbered assignment of the individual subcontracts which the City elects to have assigned to it, which election as to assignment shall be in the exclusive and sole discretion of the City. Further, the DB acknowledges and agrees that, in the event of assignment, the City shall not assume such outstanding obligations and duties of the DB, including but not limited the obligation to pay the DB's subcontractors and/or subcontractors shall amounts and/or assume such of the DB's obligations which preceded the date of assignment of such subcontracts.

#### **ARTICLE XVI. NON-ASSIGNMENT**

DB shall not be entitled to assign any of its rights and interests under this Contract. Nothing herein, however, shall limit the right of the DB to engage the services of City-acceptable subcontractors and providers of other services and labor, including design services, subject to the provisions of the Contract Documents. Provided, however, the City retains the right to require the DB to terminate its contractual relationships with suppliers and/or subcontractors in accordance with the provisions of the General Conditions.

#### **ARTICLE XVII. OTHER CONDITIONS AND TERMS**

A. The parties for themselves, their heirs, executors, administrators, successors and assigns do hereby agree to the full performance of the covenants herein contained.

B. This Contract and any modifications, amendments or alterations thereto shall be governed, construed and enforced by and under the laws of the State of Ohio.

C. If any term or provision of this Contract or the application thereof to any person or circumstance, is finally determined including any appeal taken, to be invalid or unenforceable by

a court of competent jurisdiction, the remainder of the contract or the application of such term or provision to other person or circumstances, shall not be affected thereby, and each term and provision of the contract shall be valid and enforced to the fullest extent permitted by law.

D. This Agreement has been executed in several counterparts, each of which shall constitute a complete original Agreement, which may be introduced in evidence or used for any other purpose without production of any other counterparts.

IN WITNESS WHEREOF, the parties hereto have set their hands to as of the day and year first above mentioned.

*The person or persons signing this Agreement on behalf of the DB hereby represent and warrant to City that this Agreement is duly authorized, signed, and delivered by the DB.*

THIS AGREEMENT is entered into by City and the DB as of the date set forth above.

*(Balance of page left intentionally blank-Signatures appear on the next page)*

CITY:

THE DB/THE DESIGN-BUILDER

CITY OF LAKEWOOD, OHIO

\_\_\_\_\_  
(Name of Firm)

\_\_\_\_\_  
(Type of Organization)

By: \_\_\_\_\_

(Signature)

By: \_\_\_\_\_

(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

Attach notary acknowledgment for all signatures of the DB. If signed by other than the sole proprietor, a general partner, or corporate officer, attach original notarized Power of Attorney or Corporate Resolution.

STATE OF \_\_\_\_\_ )

) SS:

COUNTY OF \_\_\_\_\_ )

BEFORE ME, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of the above-named \_\_\_\_\_, who acknowledged that he/she did sign the foregoing instrument, being duly authorized and that the same is his/her free act and deed individually and as such representative, and the free act and deed of said \_\_\_\_\_.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, at \_\_\_\_\_, \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_  
\_\_\_\_\_

RESOLUTION NO. 8814-15

BY:

A RESOLUTION to take effect immediately provided it received the affirmative vote of at least five members of Council, or otherwise to take effect and be in force after the earliest period allowed by law, authorizing the Director of Public Works to enter into an agreement to accept a grant from the Ohio EPA clean water fund grant for the Lakewood Stream Bank Restoration and Fish Shelf project in the amount of \$122,842 and requiring a match by the City of Lakewood in the amount of \$81,894.

WHEREAS, the City of Lakewood has applied and been awarded a clean water fund grant for the construction of a fish shelf and to restore a portion of the river bank of Rocky River within the city; and

WHEREAS, acceptance of this grant and approval of matching funds will allow the stabilization of the bank and restoration of vegetation to this area; and

WHEREAS, this Council by a vote of at least five of its members determines that this resolution is an emergency measure, and that this resolution shall take effect at the earliest date possible as set forth in Article III, Sections 10 and 13 of the Second Amended Charter of the City of Lakewood, and that it is necessary for the immediate preservation of the public property, health and safety, and to provide for the usual daily operation of municipal departments in that this agreement is necessary to begin design and engineering work required stabilize and restore the stream bank this season for construction in 2016; now, therefore,

BE IT RESOLVED BY THE CITY OF LAKEWOOD, OHIO:

Section 1. The Director of Public Works, is hereby authorized to enter into an agreement to accept a grant from the Ohio EPA clean water fund grant for the Lakewood Stream Bank Restoration and Fish Shelf project in the amount of \$122,842 and requiring a match by the City of Lakewood in the amount of \$81,894.

Section 2. It is found and determined that all formal actions of this Council concerning and relating to the passage of this resolution were adopted in an open meeting of this Council, and that all such deliberation of the Council and any of its committees that resulted in such formal action were in meetings open to the public and in compliance with all legal requirements.

Section 3. This resolution is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare in the City and for the usual daily operation of the City for the reasons set forth and defined in the preamble to this resolution, and provided it receives the affirmative vote of at least five members of Council, this resolution shall take effect and be in force immediately upon its adoption by the Council and approval by the Mayor, or otherwise it shall take effect and be in force after the earliest period allowed by law.

Adopted: \_\_\_\_\_

\_\_\_\_\_  
President of Council

\_\_\_\_\_  
Clerk of Council

Approved: \_\_\_\_\_

\_\_\_\_\_  
Mayor



12650 DETROIT AVENUE 44107 216/529-6055 FAX 216/226-3650  
[www.onelakewood.com](http://www.onelakewood.com)  
Lakewood City Council  
MARY LOUISE MADIGAN, PRESIDENT  
RYAN P. NOWLIN, VICE PRESIDENT

Council at Large  
RYAN P. NOWLIN  
THOMAS R. BULLOCK III  
CINDY MARX

Ward Council  
DAVID W. ANDERSON, WARD 1  
SAM O'LEARY, WARD 2  
SHAWN P. JURIS, WARD 3  
MARY LOUISE MADIGAN, WARD 4

### Report of the Rules and Ordinances Committee Meeting Held June 22, 2015

July 1, 2015

Dear Colleagues,

The Rules and Ordinances Committee met on Monday, June 22, 2015 to consider Proposed Ordinance 25-15, the quarterly codification ordinance. Notably, with thanks to Maureen Bach of Council's staff, efforts are underway within city hall to ensure that the City's Zoning Map, which is incorporated into the City's Code, is actually updated and properly codified and published. The Committee unanimously expressed its continued dissatisfaction with the lackluster services of the City's third-party codifier and publisher, Walter H. Drane Co. and Conway Greene. The Committee unanimously recommended adoption of the quarterly codification ordinance tonight upon its third reading.

Thereafter, the Committee undertook consideration of Proposed Ordinance 23-15, and extensive conversation was had amongst members of the Committee, Law Director Butler, Human Resources Director Yousefi, members of the public, and Council colleagues. For a more detailed accounting of these discussions, the Chair points to the minutes of the June 22, 2015 Rules and Ordinances Committee meeting, which are incorporated herein, by reference. In the course of these conversations, several points of concern were noted and discussed, with the conclusion that additional meetings would be required to complete discussions and amendments. Accordingly, the Committee will convene next on July 27, 2015, to hear amendments and continue consideration of Proposed Ordinance 23-15. In the interim, I will schedule and publicly notice a meeting with Law Director Butler to discuss and draft amendments.

Respectfully Submitted,

/s/ Sam O'Leary – Ward 2  
Rules and Ordinances Committee, Chair | Public Works Committee, Member

**MINUTES OF THE RULES & ORDINANCES**  
**June 22, 2015**  
**Council Conference Room**

**Present:** Councilmembers O'Leary & Nowlin

**Also Present:** Councilmembers Anderson, Marx, Juris (5:54 p.m.) Law Director Butler, Human Resources Director Yousefi, members of the public

**Call to Order:** 5:38 pm

**Ordinance 25-15 Codification Ordinance**

It was explained that ordinance 25-15 provides quarterly instruction to Walter Drane/Conway Green to publish the revised updated version of the City ordinances. This is a routine matter done to keep the City ordinances up to date.

It was noted that efforts are underway to ensure that an updated zoning map gets published and linked through the online Code.

Councilmember Nowlin asked if there has been any move to modernize the online Code.

Director Butler stated that it is less of a priority because the new version is improved. It still remains frustrating that code sections do not have their own fixed urls in the same way that the Ohio Revised Code does.

**A motion was made to recommend adoption of Ordinance 25-15 to Council upon 3<sup>rd</sup> reading.**

**Motion was seconded and all members voted in favor.**

**Ordinance 23-15 Anti-discrimination legislation**

Councilmember O'Leary introduced the ordinance, stating that it aims to overhaul the anti-discrimination ordinances and to add protections. He expects there to be amendments to the current version to bring it in line with the Code and possibly to make substantive changes. One potential amendment is to prohibit discrimination on the basis of military service affiliation. He spoke about the challenges that service members face with employment.

Director Butler stated that he reviewed the ordinance with the goal of ensuring that it doesn't violate or interfere with other parts of Code or interfere with ORC that limits the authority of municipalities to legislate. His main concern is the way in which the ordinance interacts with the municipal courts. He stated that he will work on an amendment to make sure that the discussion of courts is lawful. He briefly elaborated on these concerns.

Director Butler and Councilmember O'Leary exchanged thoughts on stylistic issues of the ordinance.

Director Yousefi remarked on the establishment of a Human Rights Commission, stating that it would be a significant bureaucratic undertaking. She expressed concern that this process could potentially delay a person from filing their complaint elsewhere.

Director Butler followed on this concern, stating that public official liability might increase though he was not personally deterred by that fact.

Councilmember O'Leary expressed interest in minimizing the risk of increasing public official liability without interfering with the heart of the ordinance.

Director Yousefi compared the ordinance's protections with those provided by the school district. She spoke about the EEOC's policy stance on protecting against discrimination based on sexual orientation and gender identity. She had questions about enforceability and the public accommodation aspects of the ordinance.

Councilmember O'Leary replied that the notice-posting provisions could potentially be enforced in same way that the City enforces building notices. He expressed interest in exploring the pragmatic aspects of this. He emphasized the importance of notice-posting, stating that it is key to ensuring that business owners are aware of the law.

Director Yousefi asked who would be responsible for enforceability and how would the word get out to business owners.

Councilmember Nowlin expressed support for the legislative goals of the ordinance and stated his enthusiasm for working through the issues. He stated that the ordinance is ambitious and sweeping and that it will be important to get it right.

Councilmember O'Leary thanked Councilmembers Marx and O'Leary for their leadership on this issue.

Councilmember Marx expressed appreciation for the issues raised in the ordinance and a commitment to addressing all concerns. Because there doesn't currently exist a place for people to turn to who have faced discrimination, the City doesn't know the scope of the problem. She suggested further study of the Cleveland Heights and East Cleveland ordinances.

Councilmember O'Leary stated that he would write a redline or side-by-side version of the ordinance.

Councilmember Anderson expressed appreciation for the discussion. He stated that the City can do better to address the concerns of those who face discrimination.

Councilmember O'Leary asked the administration if there is any issue adding in an amendment to protect individuals on the basis of military service.

Director Butler mentioned the service member civil relief act. It was noted that Lakewood Code provides veterans with additional LRC affords vets additional points for civil service applications and that all City policies protect on the basis of military status.

Councilmember O'Leary stated that even if protections are in place elsewhere, there is no reason to leave them out of the ordinance.

There was a mention of the uniformed service employment and reemployment act.

Director Butler volunteered to take the lead on drafting changes to the courts portion of the ordinance as well as the administrative remedy provided by the commission.

Changes will be explored to minimize the civil risk to the City

Councilmember O'Leary will look at the new Charter to see if anything within it may impact the ordinance. He thanked everyone for their contributions and looks forward to the additional work.

Councilmember Juris asked about the law's jurisdiction and how to identify that both parties are under Lakewood rule. He raised questions about the applicability of online businesses. He expressed concerns about the burden on businesses.

Councilmember O'Leary expressed commitment to addressing these issues and questions.

Rules & ordinances adjourned at 6:28 p.m.

ORDINANCE NO. 25-15

BY:

AN ORDINANCE to take effect immediately provided it receives the affirmative vote of at least five members of Council, or otherwise to take effect at the earliest period allowed by law, to approve the editing and inclusion of certain ordinances and resolutions as parts of the various component codes of the Codified Ordinances and to provide for the publication of such new matter.

WHEREAS, the Walter H. Drane Company has completed a quarterly revision and updating of the Codified Ordinances of the City; and

WHEREAS, various ordinances and resolutions of a general and permanent nature that have been passed by Council but not yet included in the Codified Ordinances of the City have now been made a part thereof; and

WHEREAS, this Council by a vote of at least five of its members determines that this ordinance is an emergency measure and that it shall take effect immediately, as set forth in Article III, Sections 10 and 13 of the Second Amended Charter of the City of Lakewood, and that it is necessary for the immediate preservation of the public property, health, and safety and to provide for the usual daily operation of municipal departments, in that the publication and distribution of the 2014 Replacement Pages for the Codified Ordinances of the City of Lakewood should be conducted at the earliest date possible; now, therefore,

BE IT ORDAINED BY CITY OF LAKEWOOD, OHIO:

Section 1. The editing, arrangement and numbering and renumbering of the following ordinances and resolutions and parts of ordinances and resolutions are hereby approved as parts of the various component codes of the Codified Ordinances of the City, so as to conform to the classification and numbering system of the Codified Ordinances:

<u>Ord. No.</u>	<u>Date</u>	<u>C.O. Section</u>
28-14	12-15-14	1339.01 to 1339.17, 1339.99
36-14	1-20-15	1103.02(zz-1), (zz-2), 1143.01 1171-03
37-14	12-15-14	506.04(a)
39-14	12-15-14	309.01
46-14	12-15-14	915.01
14-04	12-15-14	902.04
4-15	3-16-15	903.10
12-15	4-20-15	145.01 to 145.05 1161.03(t)

Section 2. The Second Amended Charter published in the Codified Ordinances is the official charter of the City of Lakewood.

Section 3. It is found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were adopted in an open meeting of this Council and that all such deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

Section 4. This ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, <sup>35</sup>property, health, safety and welfare in the City

and for the usual daily operation of the City for the reasons set forth and defined in its preamble, and provided it receives the affirmative vote of at least five members of Council this ordinance shall take effect and be in force immediately, or otherwise shall take effect and be in force after the earliest period allowed by law.

Adopted: \_\_\_\_\_

\_\_\_\_\_  
President of Council

\_\_\_\_\_  
Clerk of Council

Approved: \_\_\_\_\_

\_\_\_\_\_  
Mayor



DEPARTMENT OF PLANNING & DEVELOPMENT  
DRU SILEY, DIRECTOR

12650 Detroit Avenue • 44107 • (216) 529-6630 • FAX (216) 529-5936  
[www.onelakewood.com/development](http://www.onelakewood.com/development)

July 1<sup>st</sup>, 2015

Lakewood City Council  
Lakewood, OH 44107

RE: Modification to the Rockport Square Planned Development (PD)

Dear Members of Council:

At the June 1<sup>st</sup> meeting, City Council referred a proposed modification to the Rockport Square Planned Development (PD) to the Planning Commission for a review and recommendation.

Forest City in partnership with Ryan Homes proposed a 51 unit townhouse project to complete the remaining two phases. Please refer to the attached brief that was provided to the Planning Commission providing an overview of the existing development conditions and depicting a concept site plan for the proposed units.

The Planning Commission voted at its June 4<sup>th</sup> meeting to recommend that Council approve the proposed modification to the PD. Additionally, ABR at the July 11<sup>th</sup> public hearing voted to approve the site design and architecture for the proposed townhomes.

Please refer this item to the Committee of the Whole for further discussion and review. We will introduce an ordinance reflecting these changes at the next Council meeting.

Sincerely,

Dru Siley  
Director



DEPARTMENT OF PLANNING & DEVELOPMENT  
DRU SILEY, DIRECTOR

12650 Detroit Avenue • 44107 • (216) 529-6630 • FAX (216) 529-5936

[www.OneLakewood.com/Development](http://www.OneLakewood.com/Development)

TO: Planning Commission

FROM: Dru Siley, Director

DATE: June 2<sup>nd</sup>, 2015

SUBJECT: Rockport Square Planned Development (PD) Modification

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The Planning Commission is being asked to review the proposed project and approve a modification to the existing Planned Development to allow for the construction of 51 townhome units on the two remaining sites.

**Background:**

More than a decade ago the Rockport Square development was proposed and approved by the City as a four phase project on the eastern end of Detroit Avenue. Please refer to the attached map outlining the project phases.

**Developer:** Rockport Square LLC, a limited liability company led by Forest City Land Group, and previously included Rysar Properties.

**Use:** PD for Mixed-Use Residential, Commercial and Office

**Completed**

- Phase 1A 35,000 sf of Residential
- Phase 2 26,000 sf Residential

**Unbuilt**

- Phase 1B 69,000 sf Residential  
6,900 sf of Commercial flex space
- Phase 3 66,000 sf of Office / mixed use

**Size:** Approximately 4 acres

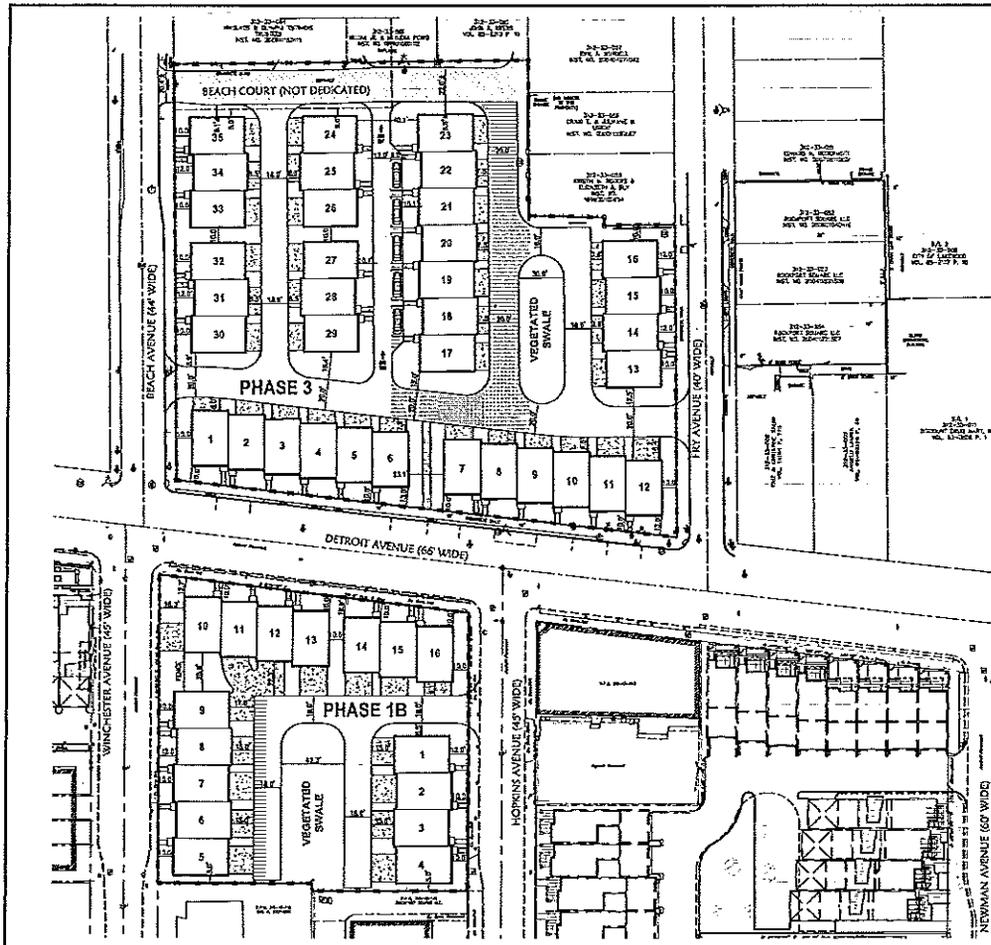
Since that time two phases of the project have been successfully completed while the remaining two phases (Phase 1B & Phase 3) have remained undeveloped. Originally, the Planned Development was approved with these phases becoming a mixed use building with 1 & 2 bedroom condos and a mixed use commercial project. Forest City Enterprises as the property owner and developer has made attempts in recent years to restart the project but has not been able to do so thus far.

However, Forrest City in partnership with Ryan Homes recently proposed a 51 unit for sale townhome project to complete the remaining two phases. Please refer to the attached site plan showing a concept site plan for these units. The proposed development is currently under review by the Architectural Board of Review and will be seeking design approval at the June 11<sup>th</sup> meeting.

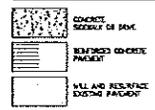
It is the administration opinion that the proposal has merit in its efforts to conform to the community's design standards and the current demand for new housing types not readily available in Lakewood.



Rockport Project Phases



**LEGEND**

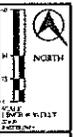


**ROCKPORT SQUARE PHASE 3**  
P.P.A. 313-13-001, P.P.A. 313-13-002, P.P.A. 313-13-004, P.P.A. 313-13-005 AND P.P.A. 313-13-006

SITE DATA (PHASE 3)	
TOTAL SITE AREA	2.80 ACRES
TOTAL LOTS	36
DENSITY	17.50 UNITS PER ACRE
FRONT YARD DEPTH (PHASE 3)	REQUIRED PER DE. 17'-12"
SETBACK FROM ROW (DETROIT AVENUE)	PROVIDED 17'-12"
SETBACK FROM ROW (BEACH AVENUE)	15'
SETBACK FROM ROW (PARK AVENUE)	17'

**ROCKPORT SQUARE PHASE 1B**  
P.P.A. 313-13-001, P.P.A. 313-13-002, P.P.A. 313-13-003 AND P.P.A. 313-13-004

SITE DATA (PHASE 1B)	
TOTAL SITE AREA	0.80 ACRES
TOTAL LOTS	16
DENSITY	17.77 UNITS PER ACRE
FRONT YARD DEPTH (PHASE 1B)	REQUIRED PER DE. 17'-12"
SETBACK FROM ROW (DETROIT AVENUE)	PROVIDED 17'-12"
SETBACK FROM ROW (WINCHESTER AVENUE)	15'
SETBACK FROM ROW (HOPKINS AVENUE)	17'-12"



ROCKPORT SQUARE - PHASE 1B & PHASE 3  
**SITE LAYOUT PLAN**  
CITY OF LANCASTER, COUNTY OF CUYAHOGA, STATE OF OHIO

**NEFF ASSOCIATES**  
INCORPORATED  
10000 WILSON AVENUE  
COLUMBUS, OHIO 43240  
614.291.1111  
www.neffassociates.com

SHEET NO.  
**C5.0**

NOTICE TO LEGISLATIVE  
AUTHORITY

OHIO DIVISION OF LIQUOR CONTROL  
6806 TUSSING ROAD, P.O. BOX 4005  
REYNOLDSBURG, OHIO 43068-9005  
(614)644-2360 FAX:(614)644-3166

TO

4594050		TRFO	KEROLOS LLC
PERMIT NUMBER		TYPE	17796 DETROIT RD 1ST FL & BSMT
10	01	2014	LAKWOOD OHIO 44107
ISSUE DATE			
06	15	2015	
FILING DATE			
C1	C2		
PERMIT CLASSES			
18	286	C	F14272
TAX DISTRICT			RECEIPT NO.

FROM 06/17/2015

9453482			WEBB FOOD MART LLC
PERMIT NUMBER		TYPE	DBA WEBB FOOD MART
10	01	2014	17796 DETROIT RD 1ST FL & BSMT
ISSUE DATE			LAKWOOD OHIO 44107
06	15	2015	
FILING DATE			
C1	C2		
PERMIT CLASSES			
18	286		
TAX DISTRICT			RECEIPT NO.



MAILED 06/17/2015

RESPONSES MUST BE POSTMARKED NO LATER THAN. 07/20/2015

IMPORTANT NOTICE

PLEASE COMPLETE AND RETURN THIS FORM TO THE DIVISION OF LIQUOR CONTROL  
WHETHER OR NOT THERE IS A REQUEST FOR A HEARING.  
REFER TO THIS NUMBER IN ALL INQUIRIES C TRFO 4594050

(TRANSACTION & NUMBER)

(MUST MARK ONE OF THE FOLLOWING)

WE REQUEST A HEARING ON THE ADVISABILITY OF ISSUING THE PERMIT AND REQUEST THAT  
THE HEARING BE HELD  IN OUR COUNTY SEAT.  IN COLUMBUS.

WE DO NOT REQUEST A HEARING.

DID YOU MARK A BOX? IF NOT, THIS WILL BE CONSIDERED A LATE RESPONSE.

PLEASE SIGN BELOW AND MARK THE APPROPRIATE BOX INDICATING YOUR TITLE:

(Signature)

(Title)  Clerk of County Commissioner

(Date)

Clerk of City Council

Township Fiscal Officer

CLERK OF LAKEWOOD CITY COUNCIL  
12650 DETROIT AV  
LAKEWOOD OHIO 44107